

EXHIBIT 1

INTRODUCTION

Respondent Lawrence Franzella was a member of the San Bruno City Council from 1987 to 1995 and has been the mayor of the city of San Bruno since 1999. He was re-elected in the November 4, 2003, Consolidated General Election. Respondent Franzella has been a licensed realtor for 32 years and has held a brokerage license for almost 30 years. Additionally, Respondent owns a 25% interest in Trotter-Vogel Realty, Inc and has held that interest since 1993. He is also the President of Trotter-Vogel Realty, Inc.

As mayor, Respondent is a public official and therefore prohibited by Government Code Section 87100 of the Political Reform Act¹ (the “Act”) from making, participating in making, or attempting to use his official position to influence any governmental decision in which he had a financial interest.

In addition, under Section 87200, mayors, as well as other enumerated public officials, are required to file an annual Statement of Economic Interests (“SEI”), disclosing their investments, interests in real property, and income. As required by the Act, mayors must file an SEI by April 1 of each year.² On an SEI, the public official must disclose the reportable economic interests that he or she held during the preceding calendar year. Among sources of income that must be disclosed are those resulting from proceeds of any sale, as well as income from any person from whom a business entity, in which the public official owns a 10% or greater interest, received payments if the public official’s pro rata share was equal to, or greater than, \$10,000 during a calendar year.

In this matter, Respondent impermissibly made a governmental decision in 2002 in which he had a financial interest. He also failed to disclose income from the sale of the real property that was the source of his conflict of interest, as well as income from clients of his business on his 2005 and 2006 SEIs.

For the purposes of this Stipulation, Respondent’s violations of the Act are stated as follows:

COUNT 1: On August 13, 2002, as the mayor of the city of San Bruno, Respondent Lawrence Franzella made a governmental decision in which he had a financial interest, by voting to approve Alternative Five of the proposed Caltrain Grade Separation Project alternatives, which involved relocating the train station at Sylvan Avenue that was within 500 feet of his real property, in violation of Section 87100 of the Government Code.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18109 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Unless April 1 falls on a Saturday, Sunday, or official holiday, in which case the filing deadline is extended to the next regular business day. (Regulation 18116.)

- COUNT 2: On or about March 4, 2004, Respondent Lawrence Franzella failed to disclose income from the sale of his real property on January 14, 2003, on his 2003 annual Statement of Economic Interests, in violation of Sections 87200 and 87207 of the Government Code.
- COUNT 3: On or about February 9, 2006, Respondent Lawrence Franzella failed to disclose income from six Trotter-Vogel Realty, Inc. clients in which his pro rata share was \$10,000 or more on his 2005 annual Statement of Economic Interests, in violation of Sections 87200 and 87207, subdivision (b), of the Government Code.
- COUNT 4: On or about March 26, 2007, Respondent Lawrence Franzella failed to disclose income from eight Trotter-Vogel Realty, Inc. clients in which his pro rata share was \$10,000 or more on his 2006 annual Statement of Economic Interests, in violation of Sections 87200 and 87207, subdivision (b), of the Government Code.

SUMMARY OF THE LAW

A. Conflicts of Interest

The primary purpose for the conflict-of-interest provisions of the Act is to ensure that “public officials, whether elected or appointed, perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Section 81001, subdivision (b).)

In furtherance of this goal, Section 87100 prohibits a public official from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which the official knows, or has reason to know, that he or she has a financial interest. Under Section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on an economic interest of the official. For purposes of Sections 87100 and 87103, there are six analytical steps to consider when determining whether an individual has a conflict of interest in a governmental decision.³

First, the individual must be a public official as defined by the Act. Section 82048 defines “public official” to include a member of a local governmental agency.

Second, the official must make, participate in making, or attempt to use his or her official position to influence a governmental decision. Under Regulation 18702.1, subdivision (a), a public official “makes a governmental decision” when the official votes on a matter, obligates his or her

³ As set forth in Regulations 18700 through 18708, the Commission has established an eight-step analysis for determining whether a public official has a conflict of interest in a governmental decision. The last two steps of the analysis are exceptions that allow a public official to establish that he or she may participate in a governmental decision even though the official may have a conflict of interest. The two exceptions are not relevant to this matter.

agency to any course of action, or enters into any contractual agreement on behalf of his or her agency.

Third, the official must have an economic interest that may be financially affected by the governmental decision. Under Section 87103, subdivision (b), a public official has a financial interest in any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more. Pursuant to Section 82035, real property is deemed to be within the jurisdiction with respect to a local government agency if the property, or any part of the property, is located within or not more than two miles outside of the boundaries of the jurisdiction, or within two miles of any land owned or used by the local governmental agency.

Fourth, it must be determined if the economic interest of the official is directly or indirectly involved in the decision. Under Regulation 18704.2, subdivision (a), real property in which a public official has an economic interest is directly involved in a governmental decision if “that real property is the subject of the governmental decision, or if any part of that real property is located within 500 feet of the boundaries (or proposed boundaries) of the real property which is the subject of the governmental decision.” Under Regulation 18704.2, subdivision (b)(1), if the real property is “directly involved” in a governmental decision, the materiality standards in Regulation 18705.2, subdivision (a) apply.

Fifth, under Regulation 18705.2, subdivision (a)(1), any financial effect of a governmental decision on the public official’s real property is presumed to be material. This presumption may be rebutted by proof that it is not reasonably foreseeable that the governmental decision will have any financial effect on the real property.

Sixth, it must have been reasonably foreseeable, at the time the governmental decision was made, that the decision would have a material financial effect on the economic interest of the official. Under Regulation 18706, subdivision (a), a material financial effect on an economic interest is reasonably foreseeable if it is substantially likely that one or more of the materiality standards applicable to the economic interest will be met as a result of the governmental decision.

Whether the financial consequences of a decision are “reasonably foreseeable” at the time of a governmental decision depends on the facts of each particular case. An effect of a decision on real property is considered “reasonably foreseeable” if there is a substantial likelihood that it will affect property values, either positively or negatively, or will alter or change the use of the property in some manner. Certainty of the effect is not required. However, if an effect is only a mere possibility, it is not reasonably foreseeable. (*In re Thorner* (1975) 1 FPPC Ops. 198.)

B. SEI Disclosure

In addition, another express purpose of the Act, as set forth in Section 81002, subdivision (c), is to ensure that the assets and income of public officials, which may be materially affected by their official actions, be disclosed so that conflicts of interest may be avoided. In furtherance of this purpose, Sections 87200 and 87203 require members of city councils and mayors to file periodic statements disclosing their reportable economic interests. Section 87500, subdivision (f),

provides that such statements shall be filed with the city clerk, who must transmit the statements to the Fair Political Practices Commission.

Under Section 87203, mayors are required to file an annual SEI, at a time specified by Commission regulations, disclosing their investments, interests in real property, and income. When a source of income is required to be disclosed on an SEI, Section 87207, subdivision (a)(1), provides that the statement shall contain the following information regarding the income: “[t]he name and address of each source of income aggregating five hundred dollars (\$500) or more in value, or fifty dollars (\$50) or more in value if the income was a gift, and a general description of the business activity, if any, of each source.”

In addition, Section 87207, subdivision (b), provides that the SEI contain all of the following information when the filer owns 10% or more of a business entity:

- (1) The name, address, and a general description of the business activity of the business entity.
- (2) The name of every person from whom the business entity received payments if the filer’s pro rata share of gross receipts from that person was equal to or greater than ten thousand dollars (\$10,000) during a calendar year.

DISCUSSION

Count 1: Making a Governmental Decision in Which the Official has a Financial Interest

Caltrain is a California commuter rail line that provides rail service between San Francisco and San Jose, with weekday commute-hour service to Gilroy. It is currently operated under contract by Amtrak and funded jointly by the City and County of San Francisco, San Mateo County Transit District, and Santa Clara Valley Transportation Authority through the Peninsula Corridor Joint Powers Board. Caltrain has a train platform in the city of San Bruno at the corner of Sylvan and Huntington Avenues (“Sylvan Avenue station”). Respondent Franzella’s real property is located within 500 feet of this train station, across Huntington Avenue. Caltrain presented the city of San Bruno with five proposed designs, the Caltrain Grade Separation Project alternatives, and then asked the city of San Bruno to select the option that best served the community. Two of these alternatives relocated the Sylvan Avenue station.

1. Respondent Was a Public Official as Defined by the Act

As mayor for the City of San Bruno on August 13, 2002, Respondent was a public official as defined in Section 82048, and was therefore subject to the prohibition against making a decision in which he has a financial interest under Section 87100.

2. Respondent Made a Governmental Decision

At the August 13, 2002, San Bruno City Council meeting, Respondent Franzella voted to approve Alternative Five of the proposed Caltrain Grade Separation Project alternatives, which involved relocating the Sylvan Avenue station to San Bruno Avenue and elevating sections of the train tracks. Respondent Franzella voted on the motion to approve the recommendation, which was approved by a 4-1 vote. Consequently, Respondent made a governmental decision for purposes of Regulation 18702.1, subdivision (a).

3. Respondent Had an Economic Interest in Real Property

At the time of the governmental decision described above, Respondent Franzella owned real property (the "Sylvan Avenue rental property") in San Bruno, California. As the real property is worth \$2,000 or more, Respondent had an economic interest in real property for the purposes of Section 87103, subdivision (b).

4. Respondent's Economic Interest Was Directly Involved in the Decision

Respondent's Sylvan Avenue rental property is within 500 feet of the Sylvan Avenue station. Therefore, the governmental decision made on August 13, 2002, to approve Alternative Five of the proposed Caltrain Grade Separation Project alternatives, which involved relocating the Sylvan Avenue station, directly involved Respondent Franzella's real property under Regulation 18704.2, subdivision (a).

5. Applicable Materiality Standard

Because Respondent's real property was directly involved in the governmental decision, the financial effect of the decision on his real property is presumed to be material. (Regulation 18705.2(a)(1).)

6. It Was Reasonably Foreseeable That the Applicable Materiality Standard Would Be Met

Respondent's governmental decision on August 13, 2002, concerned approval of Alternative Five of the proposed Caltrain Grade Separation Project alternatives, which involved relocating the train station at Sylvan Avenue away from his property. In this case, as stated above, materiality is presumed and no facts were presented to rebut this presumption.

By making a governmental decision in which he had a financial interest, Respondent Franzella violated Section 87100 of the Government Code.

Counts 2 – 4: Income Disclosure Requirements

Count 2 – Failure to Disclose Income from Sale of Real Property

Respondent filed a 2003 annual SEI with the San Bruno City Clerk, on or about March 4, 2004. The statement covered the period January 1, 2003, through December 31, 2003. Respondent's SEI for the previous year lists the Sylvan Avenue rental property, as discussed above, on Schedule B as one of his interests in real property. According to the property history and Respondent's own statements, he sold the Sylvan Avenue rental property on January 14, 2003, for

\$618,000. On Schedule A-2 of that statement, Respondent listed his investment interest in Trotter-Vogel Realty, Inc., but did not list the income for the sale of the Sylvan Avenue rental property.

Therefore, by not disclosing the income from the sale of his real property, Respondent Franzella violated Sections 87200 and 87207 of the Government Code.

Counts 3 & 4 – Failure to Disclose Pro Rata Share Income

Respondent filed two annual SEIs with the San Bruno City Clerk's office on or about February 9, 2006, for the 2005 calendar year, and on or about March 26, 2007, for the 2006 calendar year. During the periods covered by the SEIs, Respondent had an ownership interest in Trotter-Vogel Realty, Inc. of 25% or more. On each of those statements, Respondent Franzella failed to disclose the income he received from Trotter-Vogel Realty, Inc. clients in which his pro rata share was \$10,000 or more. The details of these clients who should have been disclosed on Respondent's SEIs appear on the chart below.

<u>YEAR</u>	<u>CLIENTS</u>
2005	Edward and Ermenia Simon, Drake Trust, William Maher, Nierenberg Trust, Estate of Selvaggio, and Estate of Pfeiffer
2006	Spinharney Trust, William & Mickie Stevens, Estate of Selvaggio, Hennessey Trust, Jen White, Grundy Trust, Michelle Schaukowitch, and Ruth Craig

By failing to disclose his income received from the above listed clients on his 2005 and 2006 SEIs, Respondent Franzella violated Sections 87200 and 87207, subdivision (b) of the Government Code.

CONCLUSION

This matter consists of four counts of violating the Act carrying a maximum administrative penalty of \$5,000 per violation for a total of \$20,000. In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act.

For Count 1, making a governmental decision in which an official has a financial interest is one of the more serious violations of the Act. The administrative penalty for a conflict-of-interest violation, depending on the facts of the case, has been in the mid-to-high range of available penalties. The facts of this case support an application of the typical penalty in the high end of the range. Respondent had served as a public official for 11 years at the time of the violation and knew or should have known that a conflict of interest would result from approving an alternative to move a train station away from its location which was across the street and within 500 feet of his Sylvan Avenue rental property. However, Respondent maintains that he thought it was permissible for him

to vote on the matter as it was an issue of critical safety for the City of San Bruno. Therefore, the facts of this case justify the imposition of an administrative penalty of \$5,000 for Count 1.

For Counts 2 - 4, penalties for SEI non-disclosure violations range widely depending on the circumstances of each case. In this case, Respondent failed to disclose the sale of the property that was the cause of his conflict of interest. In addition, he did not disclose the multiple income sources within the jurisdiction. However, no evidence was found that Respondent Franzella was intentionally concealing his income sources.

Disclosure of economic interests is important to provide transparency and prevent conflicts of interest. Given the facts of this case, the imposition of an administrative penalty of \$2,000 for the non-disclosure of the sale income violation (Count 2) and \$1,000 for each SEI filed without the information detailing the client's of Trotter-Vogel Realty, Inc. (Counts 3 – 4). As a condition of settlement, Respondent amended his SEIs to reflect the correct information.

The facts of this case justify imposition of the agreed upon penalty of Nine Thousand Dollars (\$9,000).